



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,955	07/20/2001	Stephen F. Dull	12587-020001	2457

26212 7590 11/12/2002

FISH & RICHARDSON P.C.
45 ROCKEFELLER PLAZA, SUITE 2800
NEW YORK, NY 10111

EXAMINER

JEANTY, ROMAIN

ART UNIT	PAPER NUMBER
----------	--------------

3623

DATE MAILED: 11/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/909,955

Applicant(s)

DULL ET AL.

Examiner

Romain Jeanty

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-15 and 34-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claims 1-15 and 34-37, for a claimed invention to be statutory, the claimed invention must be within the technological arts. The claimed invention does not fall within the technological arts because no form of technology is disclosed or claimed. By analyzing the claimed invention under “The Examination Guidelines for Computer-Related Inventions” as published by the United States Patent and Trademark Office, the examiner notes that the disclosed and claimed invention is directed to nothing more than a human making mental computations and manually receiving..., processing.... and presenting..... Therefore, claims 1-15 and 34-37 are deemed to be non-statutory.

It should be noted that the specification discloses the use of various techniques to implement the steps recited in claims 1-15 and 34-37. For example, references are made to the use of programming techniques and computing system. Incorporating these techniques into the claims 1-15 and 34-37 would be limited to the technological arts and overcoming the 35 U.S.C. 101 rejection set forth. Appropriate correction is required.

Claim Rejections - 35 USC § 103

Art Unit: 3623

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over David (Wo9959096) in view of Frost (U.S. Patent No. 5,041,972).

As per claim 1, David discloses a customer survey system comprising:
receiving at least conjoint survey data concerning consumer experience with a brand
(Page 3, lines 6-8; Page 15, lines 18-20 and Page 16, lines 6-8);
processing at least the conjoint survey data (Page 8 lines 23-27).

David discloses presenting/displaying the survey data to the user in multiple formats (Page 18, lines 9-27 and Page 19, lines 4-10). David does not explicitly disclose producing marketing analytics and presenting the marketing analytics. Frost, on the other hand, discloses “producing marketing analytics” as a means of performing analysis on survey data obtained from customers (col. 8, lines 36-39 and col. 9, lines 38-58). It would have been obvious to a person of ordinary skill in the art to modify the survey system of David to incorporate the marketing analysis of Frost. One having ordinary skill in the art would have been motivated to use such a

Art Unit: 3623

modification in order to allow customers to make intelligence decisions and take timely actions to achieve business goals.

As per claim 2, the limitations of claim 2 have been noted in the rejection of claim 1 above. However, David does not explicitly disclose “receiving at least one of a market share data”. On the other hand, Frost discloses the claimed feature “receiving at least one of a market share data” as a means of obtaining and evaluating market share data (col. 9, line 53). It would have been obvious to a person of ordinary skill in the art to modify the survey system of David to incorporate the market share data in the same conventional manner as disclosed by Frost. One having ordinary skill in the art would have been motivated to use such a modification in order to allow customers to make intelligence decisions and take timely actions to achieve business goals.

As per claim 3, the limitations of claim 3 have been noted in the rejection of claim 1 above. In addition, David discloses the claimed feature “displayed a form specified by a user “ as a means of waiting for the user to select a format for the survey data to be displayed (See abstract and Page 16 lines 4-12). Displaying the marketing analytic in the user selected format into David would have been obvious to a person of ordinary skill in the art for the motivation allowing a customer to view survey reports in a desired format.

As per claim 4, the limitations of claim 4 have been noted in the rejection of claim 1 above. However, David does not explicitly disclose “updating the conjoint survey data at predetermined intervals”. On the other hand, Frost discloses the claimed feature “updating the conjoint survey data at predetermined intervals” as a means of updating the survey data over time (col. 11, lines 35-38). It would have been obvious to person of ordinary skill in the art to modify the combined teachings of David by including updating the survey data at predetermined

Art Unit: 3623

in the same conventional manner as disclosed by Frost. A person having ordinary skill in the art would have been motivated to use such a combination in order to maintain accuracy of the survey data.

As per claim 5, the limitations of claim 5 have been noted in the rejection of claim 1 above. In addition, David discloses the claimed feature “wherein a presentation engine is used to provide a variety of display choices to a user” by using a Java Applet for displaying options to the customer (Page 18, lines 9-14).

As per claim 6, the limitations of claim 6 have been noted in the rejection of claim 1 above. However, David does not explicitly disclose “generating simulation data using the marketing analytics”. On the other hand, Frost discloses the claimed feature “generating simulation data using the marketing analytics” as a means of simulating the market data (col. 9, lines 41-58). It would have obvious to a person of ordinary skill in the art to modify David’s system to include market simulation in the same conventional manner as disclosed by Frost. One having ordinary skill in the art would have been motivated to utilize such a combination to allow customers to make intelligence decisions and take timely actions to achieve business goals.

As per claim 7, the limitations of claim 7 have been noted in the rejection of claim 1 above. However, David does not explicitly disclose “a trend analytic”. On the other hand, Frost discloses at least the claimed feature “a trend analytic” as a means of predicting trend in market share data (col. 11, lines 35-38). It would have obvious to a person of ordinary skill in the art to modify David’s system to include trend in market shares as taught by Frost. One having ordinary skill in the art would have been motivated to utilize such a combination to allow customers to make intelligence decisions and take timely actions to achieve business goals.

Art Unit: 3623

As per claim 8, David discloses a customer survey system discloses an apparatus comprising:

a memory and processor a processor coupled to the memory (Page 9, lines 24-28), wherein the processor is configured to:

receiving at least conjoint survey data concerning consumer experience with a brand (receiving survey data from the customer) (Page 3, lines 6-8; Page 16, lines 6-8);

processing at least the conjoint survey data (Page 8 lines 23-27).

David discloses presenting/displaying the survey data to the user in multiple formats (See abstract; Page 18, lines 9-14 and Page 19, lines 4-10). However, David does not explicitly disclose producing marketing analytics and presenting the marketing analytics to a user. Frost, on the other hand, discloses “producing marketing analytics” as a means of performing analysis on survey data obtained from customers (col. 8, lines 36-39 and col. 9, lines 38-58). It would have been obvious to a person of ordinary skill in the art to modify the survey system of David to incorporate the marketing analysis of Frost. One having ordinary skill in the art would have been motivated to use such a modification in order to allow customers to make intelligence decisions and take timely actions to achieve business goals.

As per claim 9, the limitations of claim 9 are noted in the rejection of claims 2 above. Therefore, it is rejected under the rationale.

As per claim 10, the limitations of claim 10 are noted in the rejection of claim 3 above. Therefore, it is rejected under the rationale.

As per claim 11, the limitations of claim 11 are noted in the rejection of claim 4 above. Therefore, it is rejected under the rationale.

Art Unit: 3623

As per claim 12, the limitations of claim 12 are noted in the rejection of claim 5 above.

Therefore, it is rejected under the rationale.

As per claim 13, the limitations of claim 13 are noted in the rejection of claim 6 above.

Therefore, it is rejected under the rationale.

As per claim 14, the limitations of claim 14 are noted in the rejection of claim 7 above.

Therefore, it is rejected under the rationale.

As per claim 15, claim 15 recites an article comprising a computer-readable medium that stores executable instructions for causing a computer system for performing the steps of claim 1 above. Therefore, claim 15 is rejected under the same rationale as claim 1 above.

As per claim 16, claim 16 recites an article comprising a computer-readable medium that stores executable instructions for causing a computer system for performing the steps of claim 2 above. Therefore, it is rejected under the rationale.

As per claim 17, claim 17 recites an article comprising a computer-readable medium that stores executable instructions corresponding to limitations in method claim 3 above. Therefore, it is rejected under the same rationale.

As per claim 18, Claim 18 recites an article comprising a computer-readable medium that stores executable instructions corresponding to limitations in method claim 4 above. Therefore, it is rejected under the same rationale.

As per claim 19, Claim 19 recites an article comprising a computer-readable medium that stores executable instructions corresponding to limitations in method claim 5 above. Therefore, it is rejected under the same rationale.

Art Unit: 3623

As per claim 20, claim 20 recites an article comprising a computer-readable medium that stores executable instructions corresponding to limitations in method claim 6 above. Therefore, it is rejected under the same rationale.

As per claim 21, claim 21 recites an article comprising a computer-readable medium that stores executable instructions corresponding to limitations in method claim 7 above. Therefore, it is rejected under the same rationale.

As per claim 22, David discloses survey web server (See figure 1, element 20). It is to be noted that in order for a user/customer to obtain survey information from the survey web server, the user/customer must access the survey web server.

David further discloses the claimed feature “providing a variety of selectable display choices, and selecting a display choice and viewing survey data in response to the selection” as a means of permitting tabulated survey result data to displayed in multiple graphical formats (Page 18, lines 1-27).

David is silent on the idea process marketing analytics, wherein the marketing analytics are based on at least conjoint data concerning consumer experience with a brand. On the other hand, Frost discloses a method for evaluating a consumer which performs analysis on survey data obtained from customers (col. 8, lines 36-39 and col. 9, lines 38-58). It would have been obvious to a person of ordinary skill in the art to modify the survey system of David to incorporate evaluating a consumer which performs analysis on survey data obtained from customers of Frost. One having ordinary skill in the art would have been motivated to use such a modification in order to allow customers to make intelligence decisions and take timely actions to achieve business goals.

Art Unit: 3623

As per claim 23, the limitations of claim 22 have been noted in the rejection of claims 22 above. In addition, David discloses a network system (See Page 7, lines 5-8).

As per claim 24, the limitations of claim 25 have been noted in the rejection of claim 22 above. However, David does not explicitly disclose “generating simulation data using the marketing analytics”. On the other hand, Frost discloses the claimed feature “generating simulation data using the marketing analytics” as a means of simulating the market data (col. 9, lines 41-58). It would have obvious to a person of ordinary skill in the art to modify David’s system to include market simulation in the same conventional manner as disclosed by Frost. One having ordinary skill in the art would have been motivated to utilize such a combination to allow customers to make intelligence decisions and take timely actions to achieve business goals.

As per claim 25, the limitations of claim 25 have been noted in the rejection of claim 22 above. However, David does not explicitly disclose a “a trend analytic”. On the other hand, Frost discloses at least the claimed feature “trend analytic” as a means of predicting trend in market shares (col. 11, lines 35-38). It would have obvious to a person of ordinary skill in the art to modify David’s system to include trend in market shares as taught by Frost. One having ordinary skill in the art would have been motivated to utilize such a combination to allow customers to make intelligence decisions and take timely actions to achieve business goals.

As per claim 26, David discloses an apparatus comprising:

a memory and processor a processor coupled to the memory (Page 9, lines 24-28),
wherein the processor is configured to:

receiving at least conjoint survey data concerning consumer experience with a brand
(receiving survey data from the customer) (Page 3, lines 6-8; Page 16, lines 6-8);

Art Unit: 3623

processing at least the conjoint survey data (Page 8 lines 23-27).

David discloses presenting/displaying the survey data to the user in multiple formats (Page 18, lines 9-14 and Page 19, lines 4-10). However, David does not explicitly disclose producing marketing analytics and presenting the marketing analytics to a user. Frost, on the other hand, discloses “producing marketing analytics” as a means of performing analysis on survey data obtained from customers (col. 8, lines 36-39 and col. 9, lines 38-58). It would have been obvious to a person of ordinary skill in the art to modify the survey system of David to incorporate the marketing analysis of Frost. One having ordinary skill in the art would have been motivated to use such a modification in order to allow customers to make intelligence decisions and take timely actions to achieve business goals.

As per claim 27, the limitations of claim 27 have been noted in the rejection of claims 26 above. In addition, David discloses a network system (See Page 7, lines 5-8).

As per claim 28, the limitations of claim 25 have been noted in the rejection of claim 26 above. However, David does not explicitly disclose “generating simulation data using the marketing analytic”. On the other hand, Frost discloses the claimed feature “generating simulation data using the marketing analytics” as a means of simulating the market share data (col. 9, lines 41-58). It would have obvious to a person of ordinary skill in the art to modify David’s system to include market simulation in the same conventional manner as disclosed by Frost. One having ordinary skill in the art would have been motivated to utilize such a combination to allow customers to make intelligence decisions and take timely actions to achieve business goals.

Art Unit: 3623

As per claim 29, the limitations of claim 25 have been noted in the rejection of claim 22 above. However, David does not explicitly disclose “a trend analytic”. On the other hand, Frost discloses at least the claimed feature “a trend analytic” as a means of predicting trend in market shares (col. 11, lines 35-38). It would have obvious to a person of ordinary skill in the art to modify David’s system to include trend in market shares as taught by Frost. One having ordinary skill in the art would have been motivated to utilize such a combination to allow customers to make intelligence decisions and take timely actions to achieve business goals.

As per claim 30, claim 30 recites an article comprising a computer-readable medium that stores executable instructions corresponding to limitations in method claim 22 above. Therefore, it is rejected under the same rationale.

As per claim 31, claim 31 recites an article comprising a computer-readable medium that stores executable instructions corresponding to limitations in method claim 23 above. Therefore, it is rejected under the same rationale.

As per claim 32, claim 32 recites an article comprising a computer-readable medium that stores executable instructions corresponding to limitations in method claim 24 above. Therefore, it is rejected under the same rationale.

As per claim 33, claim 3 recites an article comprising a computer-readable medium that stores executable instructions corresponding to limitations in method claim 29 above. Therefore, it is rejected under the same rationale.

5. Claims 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over David (Wo9959096) in view of Frost (U.S. Patent No. 5,041,972) and in view of Revashetti et al (U.S. Patent No. 6,453,347).

Art Unit: 3623

As per claim 34, David discloses a customer survey system comprising:
processing at least conjoint survey data regarding at least one brand (Page 8, lines 23-24);
displaying the survey data based on a user selection (Page 18, lines 9-27 and Page 19, lines 4-10);

David is silent on the idea of grouping the processed data according to a plurality of marketing analytics. On the other hand, Frost discloses the claimed feature “grouping the processed data according to a plurality of marketing analytics” as a means of evaluating the survey data and grouping the data for performing marketing analysis (col. 7, lines 29-54 and col. 8, lines 36-39). It would have been obvious to a person of ordinary skill in the art to modify the system of David to include marketing analytic “analysis” in the same conventional manner as disclosed by Frost. One having ordinary skill in the art would have been motivated to use such a modification in order to allow customers to make intelligence decisions and take timely actions to achieve business goals. The combination of David and Frost does not explicitly disclose an analytic engine and a presentation engine. Revashetti et al, in the same field of endeavor, discloses an analysis engine and a presentation engine for analyzing and presenting marketing data to a user computer (See figure 3-2, elements 324 and 326; col. 4, lines 34-57). It would have been obvious to a person of ordinary skill in the art to modify the David and Frost’s system to include the analysis engine and the presentation engine of Revashetti et al. One having ordinary skill in the art would have been motivated to do so in order to present marketing information to a user.

As per claim 35, the limitations of claim 35 have been noted in the rejection of claim 34 above. However, the combined references of David and Revashetti et al do not explicitly

Art Unit: 3623

disclose “generating simulation data using the marketing analytic”. On the other hand, Frost discloses the claimed feature “generating simulation data using the marketing analytics” as a means of simulating the market data (col. 9, lines 41-58) . It would have obvious to a person of ordinary skill in the art to modify David and Ravashetti et al’s system to include market simulation in the same conventional manner as disclosed by Frost. One having ordinary skill in the art would have been motivated to utilize such a combination to allow customers to make intelligence decisions and take timely actions to achieve business goals.

As per claim 36, the limitations of claim 7 have been noted in the rejection of claim 36 above. However, the combined references of David and Revashetti et al do not explicitly disclose “ a trend analytic”. On the other hand, Frost discloses at least the claimed feature “trend analytic” as a means of predicting trend in market shares (col. 11, lines 35-38). It would have obvious to a person of ordinary skill in the art to modify the David and Revashetti et al’s system to include trend in market shares as taught by Frost. One having ordinary skill in the art would have been motivated to utilize such a combination to allow customers to make intelligence decisions and take timely actions to achieve business goals.

As per claim 37, the limitations of claim 2 have been noted in the rejection of claim 34 above. However, the combined references of David and Revashetti et al do not explicitly disclose “receiving at least one of a market share data”. On the other hand, Frost discloses receiving at least one of a market share data (col. 9, line 53). It would have been obvious to a person of ordinary skill in the art to modify the survey system of David and Revashetti et al’s system to incorporate the market share data in the same conventional manner as disclosed by Frost. One

Art Unit: 3623

having ordinary skill in the art would have been motivated to use such a modification in order to allow customers to make intelligence decisions and take timely actions to achieve business goals.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Johnson et al (U.S. Patent No. 4,355,372) disc loses a survey system for collecting market survey data.

b. Fuerst (U.S. Patent No. 6,189,029) discloses a survey system for collecting and tabulating user answers to survey questions.

c. Revashetti (U.S. Patent 6,453,347) discloses an active marketing system having presentation engine for analyzing survey data and presenting marketing data to a client computer.

d. Donna (Dialog) discloses "Learning capitalist marketing by teaching simulation" which teaches marketing analytical tool for collecting and analyzing marketing data.

e. (Dialog) discloses "Online Research Help -- MarketTools Service Automates Surveys (MarketTools introduces eService, a new service that provides applications for conducting market research online)"; Dialog file 9, Accession No. 02533140.

f. Harte-Hanks discloses "Launches Harte-Hanks Analytics; David Blackwell Appointed President of New Unit that Will Unify, Maximize Harte-Hanks Analytical and Research Resources" which teaches marketing analytics

Art Unit: 3623

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (703) 308-9585. The examiner can normally be reached Monday-Thursday from 7:30 am to 6:00 pm.

If attempts to reach the examiner are not successful, the examiner's supervisor, Tariq R Hafiz can be reached at (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C 20231

or faxed to: (703) 305-7687

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington VA, seventh floor receptionist.

November 4, 2002



Romain Jeanty

Patent Examiner

Art Unit 3623